IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10518 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TRIKAMBHAI MAVAJI VAGHELA

Versus

G E B

Appearance:

1. Special Civil Application No. 10518 of 1998

MS SADHANA SAGAR for Petitioner No. 1

MR MD PANDYA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/02/2004

ORAL JUDGEMENT

The petitioner who has been working as part time kamdar since 1st November, 1983 has approached this Court under Article 226 of the Constitution of India, making a grievance that he has been making request to respondents

for appointing him as full time employer since 1994, the said request is not being acceded to. According to him, on 10th September, 1998, he had made a last attempt to request the respondents to make him permanent on the said post, but no favourable reply was received. Hence, he has approached this Court in the year 1998 by way of this petition.

2. The facts of this case in nutshell can be stated as under :-

2.1. Vide order dated 1st November, 1983, the petitioner was appointed as part time kamdar by respondent no.2 on the terms and conditions mentioned in the said order. His appointment was made on the monthly salary of Rs.150=00 per month (fixed) without any allowance. According to the conditions of the order, he was required to work daily from 8:00 a.m. to 11:a.m. It appears that the petitioner continued to work on the said post for considerably long period. It was in the year 1994, some movement to appoint him as full time employee took place. It may be noted here, that respondent Board issued Circular dated 26th February, 1992, which was based on the Circular of the Finance Department of the Government of Gujarat dated 26th December, 1980. In consonance with the Finance Department's Circular this Circular was issued by the Board in respect of part time employees who had rendered service for three years on that post and to absorb them on the vacant permanent post as full time employee. In the Finance Department's Circular, this very direction was given to all the Heads of the Government Departments. It appears that in wake of this Circular attempts to get the petitioner appointed as permanent employee took place and recommendations were made, not only by the concerned officers of the Board itself, but even by the Minister of the State Government for getting him appointed on full time basis. All these attempts seem to have failed and, therefore, the petitioner has been constrained to file this petition.

2.2. It is submitted by learned advocate appearing for the petitioner that the petitioner had been working as part time kamdar since 1st November, 1983. It is averred in the petition that the petitioner was required to discharge duties between 7:00 a.m. to 2:00 p.m. i.e. for 7 hours. It has also been averred that since the date of his initial appointment till the date of filing the petition, he was working as part time kamdar. This factual averment have not been controverted and the other side has not filed any affidavit-in-reply. There is, therefore, no reason to disbelieve this version of the

petitioner. Now the question is whether the petitioner was required to be absorbed on permanent post in view of the Circular dated 26th February, 1992 which is annexed to the petition at annexure-D, issued by the Board in respect of part time employees. As already stated above, this Circular is completely based on the Circular of the State Government dated 26th December, 1980 as can be seen from the Circular of the Board which makes a reference of the Circular of the Finance Department dated 26th December, 1980. Both these Circulars are pari materia. In Special Civil Application No. 8917 of 1998 and its cognate matters which have been decided today, I have taken the view that inspite the ground of curtailment in expenditure, the respondent was required to act on the Circular of the Finance Department dated 26th December, 1980 and appoint the petitioners on the permanent post, if such posts were available in accordance with their seniority as well as in accordance with concerned Regulations, etc. It may be noted that in that case, reference of the subsequent Circular issued by the Finance Department dated 21st August, 1995 which stayed the earlier Circular by way of economy measure, directions on aforesaid lines have been issued to the respondents for absorption of those petitioners on permanent post.

3. In view of the aforesaid decision, no different view can be taken in this petition. This petition on that sole ground is required to be allowed with a direction that respondent shall appoint the petitioner on permanent post, if the permanent posts are found vacant, the petitioner shall be appointed on the same in accordance with the claim, in the matter of seniority and the Regulations and if otherwise he is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible but in any case not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein.

This petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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